

ORDINANCE NUMBER 39

CITY OF TOWER, MINNESOTA

An ordinance licensing and regulating the sale consumption of intoxicating liquor, repealing inconsistent ordinances, and providing a penalty of violation.

The City of Tower ordains:

Section 1. PROVISION OF STATE LAW ADOPTED. The provisions of Minnesota Statutes Chapter 3450A, relating to the definition of terms, licensing, consumption, sales, financial responsibility of licensees, hours of sale, and all other matters pertaining to the retail sale, distribution, and consumption of intoxicating liquor are adopted and made a part of this ordinance as if set out in full.

Section 2. DEFINITIONS. The following words and terms when used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise:

- A. Bar -A Counter at which 3.2 percent malt liquor, intoxicating liquor, or wine is served.
- B. Club - An incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes, for intellectual improvement, or a congressionally chartered veteran's organization, which;
 - a. Has more than fifty (50) active members;
 - b. Has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; and
 - c. Is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wages fixed and voted each year by the governing body.
- C. Exclusive Off Sale Liquor Store - An establishment used exclusively for the sale of intoxicating liquor except for the incidental sale of ice, tobacco, beverages for mixing with intoxicating liquor, soft drinks, cork extraction devices, and book and videos on the use of alcoholic beverages in the preparation of food. If the store exists with other businesses in the same building, said liquor store must occupy a separate room, with its own lockable entrance. Entrance may be interior or exterior in nature. Store shall be locked during non business hours.
- D. Exclusive on sale liquor store - An establishment used exclusively for the sale of intoxicating liquor using a bar, bar stools, and/or booths and tables. The incidental sale of ice, tobacco, soft drinks, frozen pizzas, potato chips, and other sundries, cork extraction devices, and books and videos on the use of alcoholic beverages in the preparation of food shall be permitted. The principle part of the business shall be the sale of liquor.

- E. Hotel – An establishment where food and lodging are regularly furnished to transients and which has:
 - a. A resident proprietor or manager;
 - b. A dining room serving the general public at tables and having facilities for seating at least thirty (30) guests at one time; and
 - c. At least fifteen (15) guest rooms.
- F. Intoxicating Liquor – Ethyl alcohol, distilled, fermented, spirituous, vinous, and malt beverages containing more than 3.2 percent of alcohol by weight.
- G. Malt Liquor – Any beer, ale, or other beverage made from malt by fermentation and containing not less than one-half (1/2) on (1) percent alcohol by volume.
- H. Meal – Entrees, appetizers, and sandwiches offered on a restaurant menu.
- I. Off Sale – The sale of intoxicating liquor, and/or wine in original packages for consumption off the licensed premises only.
- J. On Sale – The sale of intoxicating liquor, and/or wine for consumption on the licensed premises only.
- K. Restaurant – Any establishment, other than a hotel, under the control of a single proprietor or manager, having appropriate facilities to serve meals, entrees, or sandwiches offered on a menu, for seating not less than 30 guests at one time, and where in consideration of payment are regularly served at tables to the general public, and which employs an adequate staff for the usual and suitable service to its guests and the principal part of the business of which is serving the food.
- L. Wine – A sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake, in each instance containing up to 14 percent alcohol by volume for non-industrial use.

Section 3. LICENSE REQUIRED.

- A. General Requirement – No person, except a wholesaler or manufacturer to the extent authorized under state license, shall directly or indirectly deal in, sell, or keep for sale in the city any intoxicating liquor without a license to do so as provided in this ordinance. Liquor licenses shall be of five kinds:
 - On Sale Temporary
 - On Sale
 - On Sale Wine
 - Off Sale
 - Club Licenses.
- B. On Sale Licenses – These shall be issued only to hotels, clubs, restaurants, and exclusive on sale liquor stores. No more than four (4) on sale licenses may be issued, per state statute, pursuant to the 1990 census of 502 population. A maximum of two licenses may be issued to exclusive on sale liquor stores. Per state statute, if the official population of the City drops below 500, these licenses shall become non transferable until one license is revoked or non-renewed by reason of this ordinance.
- C. On Sale Wine Licenses – These licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes Section 340A. 440, Sideslipping 5, and shall permit only the sale of wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food.

- D. Temporary On Sale Licenses - Subject to the approval of the commissioner of public safety, temporary on sale licenses shall be issued only to approved groups, clubs, or charitable, religious, or other non-profit organizations in existence for at least three years. A temporary license authorizes the "on-sale" of intoxicating liquor in connection with a social event within the city sponsored by the licensee and subject to the restrictions imposed by the state liquor act.
- E. Off Sale Licenses - These licenses shall be issued only to exclusive off sale liquor stores. Nor more than six (6) off sale licenses shall be issued.
- F. Special club on sale licenses - Special club licenses shall be issued only to incorporated clubs, or congressionally chartered veterans' organizations which have been in existence at least three years. Liquor may be served only to qualified members and bonafide quests.

Section 4. APPLICATION FOR LICENSE.

- A. Form - Every application for a license to sell liquor shall state the name of the applicant, age, representations as to character (with such references as the council may require), citizenship, the type of license applied for, the business in connection with which the proposed license will operate and its location, whether the applicant has been in that business at that place, and such other information as the council may require from time to time. Every application shall also include a copy of each summons received by the applicant under Minnesota Statutes Section 340A.802 during the preceding year. (M. S. 340.409 Subdivision 8) IN addition to containing such information, the application shall be in the form prescribed by the Bureau of Criminal Apprehension and shall be verified and filed with the City Clerk. No person shall make a false statement in an application. All applications for a license shall be referred to the Chief of Police and to such other city departments as the city clerk shall deem necessary for verification and investigation of the facts on the application.
- B. Bond - Each applicant for a license shall be accompanied by a surety bond, as per state statute.
- C. Financial Responsibility - No liquor license may be issued, maintained, or renewed unless the applicant demonstrates proof of financial responsibility as defined in Minnesota Statutes Section 340A.409 with regard to liability under the Statutes, Section 340A.801. Such proof shall be filed with the commissioner of public safety. (Applicants for liquor licenses to whom the requirement for proof of financial responsibility applies include applicants for wine licenses with sales of less than \$10,000.00 of wine per year.) Any liability insurance policy filed as proof of financial responsibility under this subdivision shall conform to Minnesota Statutes Section 340A.409.
- D. Approval of Security - The security offered under the Section titled Bond shall be approved by the City Council and in the case of applicants for on sale wine licenses and off sale licenses, by the state commissioner of public safety. Liability insurance policies required by this ordinance but not by state law and surety bonds required under Section B above shall be approved as to form by the City Attorney. Operatioin of a licensed business without having on file with the City at all times effective security as required in Sections A and B of revocation of the license.

Section 5. LICENSE FEES.

- A. Fees - The annual fee for a liquor license shall be \$2,500.00 for an "on sale" license, \$20 for a temporary on sale license, \$100 for an on sale wine license, \$100 for an off sale license, and \$200 for a special club license.
- B. Payment - Each application for a license shall be accompanied by a receipt from the City Treasurer for payment in full of the license fee and the fixed investigation fee required under Section 5, Subdivision A, if any. All fees shall be paid into the general fund. If an application for a license is rejected, the treasurer shall refund the amount paid as license fee.
- C. Term Pro Rata Fee - Each license shall be issued for a period of one year except that if the application is made during the license year, a license may be issued for the remainder of the year for a pro rata fee, with any unexpired fraction of a month being counted as one month. Every license shall expire on the last day of June.

Section 6. GRANTING OF LICENSES.

- A. Preliminary investigation - On application for an on sale license and on application for transfer of an existing on sale license, the applicant shall pay with his application an investigation fee of \$150 and the City shall conduct a preliminary background and financial investigation of the applicant. The application in such case shall be made on a form prescribed by the State Bureau of Criminal Apprehension and with such additional information as the Council may require. If the Council deems in the public interest to have an investigation made on a particular application for renewal of an on sale license, it shall so determine. In any case, if the council determines that a comprehensive background and financial investigation of the application is necessary, it may conduct the investigation itself or contract with the Bureau of Criminal Apprehension for the investigation. No license shall be issued, transferred, or renewed if the results show to the satisfaction of the council that issuance would not be in the public interest. If an investigation outside the state is required the applicant shall be charged the cost, not to exceed \$10,000, which shall be paid by the applicant after deducting any initial investigation fee already paid. The fee shall be payable by the applicant whether or not the license is granted.
- B. Hearing and Issuance - The City Council shall investigate all facts set out in the application and not investigated in the preliminary background and financial investigation conducted pursuant to the above section. Opportunity shall be given to any person to be heard for or against the granting of the license. After the investigation and hearing, the Council shall in its discretion, grant or refuse the application. No On Sale Wine License or Off Sale License shall become effective until it together with the security furnished by the applicant, has been approved by the commissioner of public safety.
- C. Person and Premises Licensed; Transfer - Each license shall be issued only to the applicant and for the premises described in the application. No license may be transferred to another person or place without City Council approval. Any transfer of stock of a corporate license is deemed a transfer of license, and a transfer of stock without prior council approval is ground for revocation of the license.

- D. Persons Ineligible for License - No license shall be granted to any person made ineligible for such a license by state law. No more than one on sale and one off sale license shall be directly or indirectly issued within the City to any one person.

Section 7. PLACES INELIGIBLE FOR LICENSE.

- A. General Prohibition - No license shall be issued for any place or business ineligible for such a license under state laws.
- B. Delinquent Taxes and Charges - No license shall be granted for operation on any premises on which taxes, assessments, or other financial claims of the city are delinquent and unpaid.
- C. Distance from School or Church - No license shall be granted within 500 feet of any school or within 300 feet of any church, unless within the commercial zoned district as defined by the Zoning Ordinance adopted by the City of Tower in 1979.

Section 8. CONDITIONS OF LICENSE.

- A. In General - Every license is subject to the conditions in the following subdivisions and all other provisions of this ordinance and of any other applicable ordinance, state law, or regulation.
- B. Insurance - Compliance with financial responsibility requirements of state law and of this ordinance is a continuing condition of any license granted pursuant to this ordinance.
- C. Licensee's Responsibility - Every licensee is responsible for the conduct in the licensed establishment, and any sale of alcoholic beverages by any employee authorized to sell such beverages in the establishment is the act of the licensee.
- D. Inspections - Every license shall allow any peace officer, health officer, or properly designated officer, or employee of the city to enter, inspect, and search the premises of the license during business hours without a warrant.
- E. Display During Prohibited Hours - No On Sale establishment shall display liquor to the public during hours when the sale of liquor is prohibited.

Section 9. RESTRICTIONS ON PURCHASE AND CONSUMPTION.

- A. Liquor in Unlicensed Places. No person shall mix or prepare liquor for consumption in any public place or place of business unless it has a license to sell liquor On Sale or a permit from the commissioner of public safety under Minnesota Statutes Section 340A.414 and no person shall consume liquor in any such place.
- B. Consumption in Public Places - No person shall consume liquor on a public highway, public park, or other public place.

Section 10. SUSPENSION AND REVOCATION. The Council may either suspend for up to 60 days or revoke any liquor license, or impose a civil fine not to exceed \$2,000, for each violation upon a finding that the licensee has failed to comply with any applicable statute, regulation, or ordinance relating to alcoholic beverages. Except in cases of failure of financial responsibility no suspension or revocation shall take effect until the licensee has been afforded an opportunity for

a hearing pursuant to Minnesota Statutes Sections 14.57 to 14.70 of the Administrative Procedure Act.

Lapse of required dram shop insurance or bond, or withdrawal of a required deposit of cash or securities, shall effect an immediate suspension of any license issued pursuant to this ordinance without further action of the City Council. Notice of cancellation, lapse of a current liquor liability policy or bond, or withdrawal of deposited cash or securities shall also constitute notice to the licensee of the impending suspension of the license. The holder of a license who has received notice of lapse of required insurance or bond, or withdrawal of a required deposit, or of suspension or revocation of a license, may request a hearing thereon and if such a request is made in writing to the Clerk a hearing shall be granted within 10 days or such longer period as may be requested. Any suspension under this paragraph shall continue until the City Council determines that the financial responsibility requirements of this ordinance have again been met.

Section 11. PENALTY. Any person violating any provision of this ordinance is guilty of a misdemeanor as defined by state statute.

Section 12. REPEAL. ORDINANCES Number 60 and 60A are hereby repealed.

Section 13. EFFECTIVE DATE. This ordinance becomes effective upon its passage and publication according to law.

Introduced by Alderman Hiltunen on September 29, 1993 and given the first reading.

Given the second reading on November 10, 1993 by Alderman Hiltunen.

Moved by Alderman Hiltunen and supported by Alderman Mickle that the ordinance be adopted.

Adopted November 10, 1993 by the following vote:

Ayes: Burgess, Hiltunen, Mickle, and Majerle.

Nays: Hendrickson

Absent: None

Published in the Tower News on November 18, 1993.

Gary Burgess, Mayor

Timothy L Kotzian, City Clerk - Treasurer